SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

OCTOBER TERM 1975

No. 75-61

HENRY R. CARR,

Petitioner,

vs.

MERCY HOSPITAL, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, MIAMI, FLORIDA, SUPREME COURT OF FLORIDA AND THE UNITED STATES COURT OF APPEALS, 5TH CIRCUIT, NEW ORLEANS, LOUISIANA.

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MIAMI REVIEW — 371-4853 — 377-3721

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Petitioner, HENRY R. CARR, prays that a Writ of Certiorari issue to review the decision of the District Court of Appeal of Florida, Third District, Miami, Florida, wherein judgment was entered in favor of Respondent, MERCY HOSPITAL, Inc., based upon the enforceability

of an incomplete instrument; also the denial of Petitioner's Petition for a writ to the Supreme Court of Florida, and Petitioner's suggestion to the 5th. Circuit Court of Appeals, New Orleans, Louisiana for the issuance of a certified question of law to the Florida Supreme Court.

OPINION OF THE LOWER COURT

The District Court of Appeal of Florida for the Third District, rendered its decision on June 11, 1974 (App. 1-4) and denied petition for re-hearing on August 9, 1974 (App. 4).

CITATION TO OPINION BELOW

The opinion of The District Court of Appeal of Florida for the Third District, is reported at 297 So.2d page 598. The opinion is set forth in its entirety in the Appendix hereto. (App. 1-4).

JURISDICTION

The opinion and judgment of The District Court of Appeal of Florida for the Third District was rendered on June 11, 1974. Petition for re-hearing was denied on August 9, 1974. Petitioner then sought to have reviewed, in the Supreme Court of Florida (Case No. 46,118), the decision of the District Court of Appeal of Florida for the Third District, but this was denied on December 11, 1974. Petitioner's petition for re-hearing was denied on February 18, 1975. Petitioner then filed his suggestion to the 5th Circuit Court of Appeals, New Orleans, Louisiana for the issuance of a certified question of law to the Supreme Court of The State of Florida (App. 7-13), but this was

denied on May 12, 1975. Petitioner now petitions this Honorable Court for a writ of certiorari to review the aforementioned decisions.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Section 1254 (1), and Rule 19 1(b) and 2, Part V of the Supreme Court Rules. Petitioner has been deprived of his Fifth and Fourteenth Amendment rights guaranteed by the Florida Constitution and the United States Constitution.

The opinion and judgment from which this review is sought has decided an important question of Florida State Law so as to make it in conflict with Federal Law. It calls for the exercise of this Court's Power to determine the constitutional issues herein presented.

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not the decisions of the District Court of Appeal of Florida for the Third District, Miami, Florida; the denial for a writ of certiorari by the Supreme Court of Florida, and the decision of the 5th. Circuit Court of Appeal, New Orleans, Louisiana have deprived Petitioner of due process of law and of his property without due process of law?

2. Whether or not the decision of the District Court of Appeal of Florida for the Third District is in conflict with Section 3-115 of The Uniform Commercial Code and Florida Statutes 95.11(e) and 673.3-115?

RELEVANT PART OF STATUTE INVOLVED

Section 3-115, p. 45, Vol. 2, MASTER EDITION OF THE UNIFORM COMMERCIAL CODE and Florida Statute 673.3-115 — Incomplete instruments:

> "(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed."

> "(5) Within three years. — F.S.A. 95.11(e)
>
> (e) And an action upon a contract, obligation or liability not founded upon an instrument of writing, including an action for goods, wares and merchandise sold and delivered and on store accounts."

STATEMENT OF THE CASE

On September 28, 1972, Respondent filed its complaint against Petitioner (App. 14-15), alleging Petitioner was indebted to Respondent for $8,298.70 as evidenced by Respondent's statement attached (App. 17) bearing close-out date February 4, 1969. There was also attached an alleged "Authorization" and "Agreement To Pay Unpaid Balance" (App. 19) which was signed in blank by Petitioner at the request and insistence of Respondent and which Respondent alleged: "constitutes in form and pur-

pose and intent the promissory note of the Defendant to the Plaintiff." (App. 21).

On October 31, 1972, Petitioner filed a motion for more definite statement and to dismiss (App. 23) and on June 1, 1973, Respondent filed its motion for summary judgment.

Petitioner again filed a motion for more definite statement, June 11, 1973 (App. 24-25); also his motion to strike, and motion to dismiss amended complaint, copy which had been furnished to him but not filed as of June 11, 1973. On June 20, 1973, Respondent filed its amended complaint (App. 26-30), without leave of court and without the written consent of Petitioner as required by Rule 1.190 (a) of the Florida Rules of Civil Procedure.

On June 27, 1973, Petitioner filed his motion for summary judgment, and hearings were had on both motions which were not completed due to the lack of time allotted by the Court. The Trial Judge wisely requested memoranda of law from both parties, pending final hearing on both motions. These were submitted, and a notice of hearing, by special appointment, was set by Respondent to argue all motions on November 12, 1973. However, prior to this hearing, and on October 4, 1973, Respondent filed its motion for leave to amend complaint, together with its proposed second amended complaint, which second amended complaint had attached thereto the "Authorization" and "Agreement To Pay Unpaid Balance" completed by Respondent.

At the hearing on November 12, 1973, Respondent's counsel announced to the court that he would argue his

motion for summary judgment. The court, after hearing Respondent counsel's extensive arguments and arguments by Petitioner's counsel, granted summary judgment for Petitioner. Respondent's counsel then attempted to argue his motion for leave to amend complaint, but the Trial Judge held that he had denied Respondent's motion for summary judgment, granted summary judgment for Petitioner; therefore, Respondent's motion for leave to amend its complaint was "Moot". The Trial Court entered its order to this effect on November 14, 1973. (App. 30-31). Respondent's motion for re-hearing was denied, and the Trial Judge entered his order and entry of final summary judgment for Petitioner on November 27, 1973 (App. 31-32).

Respondent then took its appeal to the District Court of Appeal, Third District, which rendered its decision on June 11, 1974 (App. 1-4).

Petitioner's timely petition for re-hearing was denied on August 9, 1974. Petitioner then sought to have reviewed, in the Supreme Court of Florida (Case No. 46,118), the decision of the District Court of Appeal for the Third District, dated June 11, 1974, the Supreme Court of Florida denied Petitioner's Petition for writ of certiorari to the District Court of Appeal for the Third District, (App. 5) and on February 18, 1975 denied Petitioner's petition for re-hearing. (App. 6). Petitioner then made a suggestion to the 5th. Circuit Court of Appeals, New Orleans, Louisiana, for the issuance of a certified question of law to the Supreme Court of The State of Florida (App. 7-13). This was denied on May 12, 1975. Petitioner now petitions this Honorable Court for a writ of certiorari to review the aforementioned decisions.

REASONS FOR GRANTING THE WRIT

Petitioner has suffered discrimination under the law, has been denied equal protection under law, has been denied due process of law and suffered the loss of his property without due process of law.

STATEMENT OF THE FACTS

MARJORIE A. CARR, deceased wife of Petitioner, HENRY R. CARR, was admitted to MERCY HOSPITAL on December 31, 1968. She remained there for 31 days and was discharged on or about February 1, 1969. At the time of her discharge, Respondent was unable to state its total charges for her care and insisted that Petitioner sign a blank instrument purporting to be an agency agreement authorizing Respondent to complete an "Agreement To Pay Unpaid Balance," (App. 19) also signed in blank by Petitioner at the time he signed the alleged "Authorization." (App. 19).

Respondent's charges for said hospitalization were in the amount of $10,324.40, less $2,000.00 paid on account February 1, 1969, leaving a balance of $8,298.70 (App. 17). When Respondent had finally determined its total charges on February 4, 1969, a statement thereof was rendered to Petitioner (App. 17) who strenuously objected to Respondent's charges as oppressive and unconscionable. Petitioner demanded that Respondent show him a break-down of Respondent's charges, justifying $332.00 per day for 31 days.

For the next several months, considerable discussion took place, by telephone, between Petitioner and one of

Respondent's representatives. On each occasion, Petitioner insisted on being furnished with Respondent's existing standard and current rates, as set forth in Respondent's regular schedules (App. 21), but this was never furnished to Petitioner, as requested.

Apparently nothing further transpired between Petitioner and Respondent until September 28, 1972 when Respondent filed suit on the alleged incomplete instruments (App. 14-15), alleging: "The said agreement constitutes in form and purpose and intent the promissory note of the Petitioner to the Respondent."

On October 31, 1972, Petitioner filed his motion for more definite statement (App. 23-24), requesting Respondent furnish him with the information he had, for many months, been trying to obtain from Respondent. Respondent never complied.

Six months and two days later, to wit, on June 20, 1973, Respondent filed its amended complaint (App. 26-30), without leave of court and without the written consent of Petitioner, as required by Rule 1.190 (a) of the Florida Rules of Civil Procedure. This un-authorized complaint alternately plead:

COUNT I

The Hospital's statement which was rendered to Petitioner in February of 1969.

COUNT II

The incomplete instrument which Respondent had alleged as a promissory note in its previous complaint is now:

"an agreement to pay any unpaid balance at the time of discharge in addition to an agreement to pay attorney's fees and interest on the unpaid balance at the rate of seven per cent (7%) per annum, including an authorization in connection therewith."

COUNT III

An account stated.

Three years, seven months, and twenty four days, after Respondent's cause of action had accrued, it filed its complaint on September 28, 1972 (App. 14-15). Four years, four months, and sixteen days, after Respondent's cause of action had accrued, it filed its amended complaint, June 20, 1973 (App. 26-30), without leave of court and without the written consent of Petitioner, as required by Rule 1.190 (a) of the Florida Rules of Civil Procedure. Thereafter and on June 1, 1973, Respondent filed its motion for summary judgment. On June 11, 1973, Petitioner again filed his motion for more definite statement (App. 23-24), requesting Respondent furnish him with the information he had, for many months, been trying to obtain from Respondent. Respondent never complied. On June 27, 1973, Petitioner also filed his motion for summary judgment.

Hearings were had on both motions which were not completed due to the lack of time allotted by the court. The Trial Judge wisely requested memoranda of law from both parties pending final hearing on both motions. These were submitted, and a Notice of Hearing, by special appointment, was set by Respondent to argue all motions on

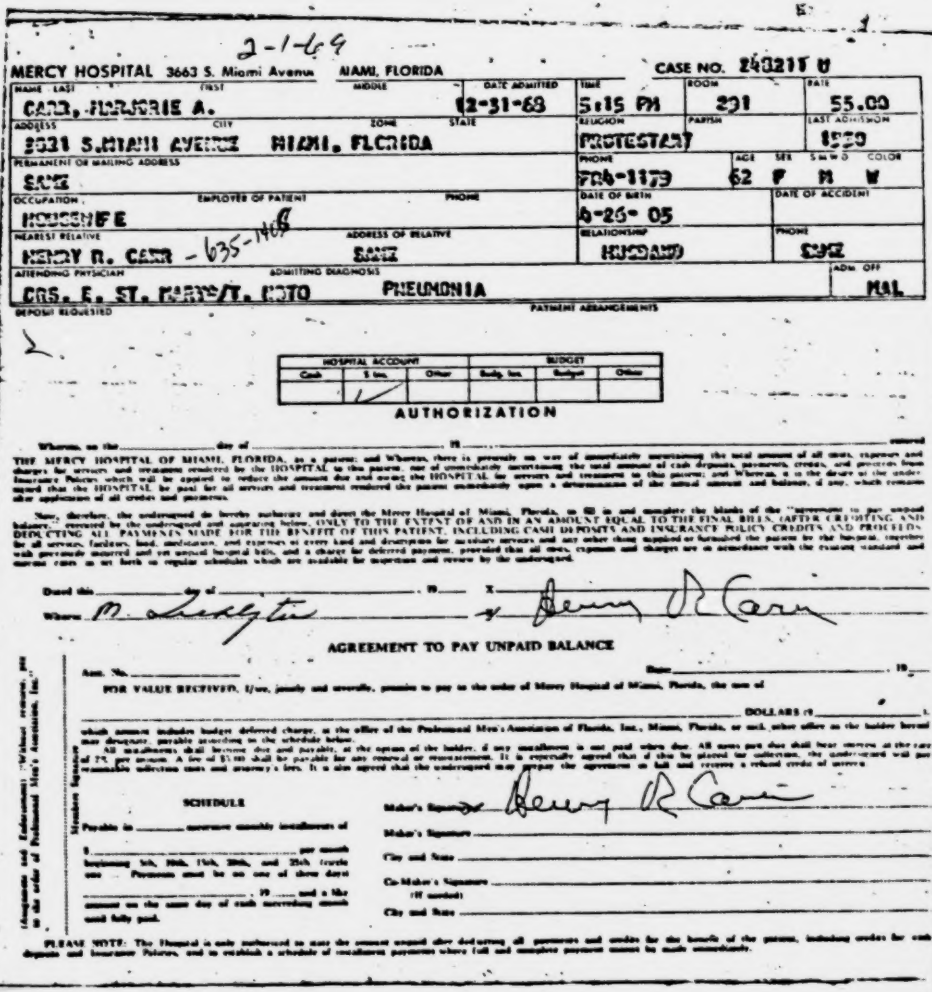
November 13, 1973. However, prior to this hearing and on October 4, 1973, Respondent filed its motion for leave to amend complaint, together with its proposed second amended complaint, which second amended complaint had attached thereto the "Authorization" and "Agreement To Pay Unpaid Balance", completed by Respondent.

At the hearing on November 12, 1973, Respondent announced to the court that it would argue its motion for summary judgment, and the court, after having heard Respondent Counsel's extensive arguments and arguments by Petitioner's counsel, granted summary judgment for Petitioner. Respondent's counsel then attempted to argue its motion for leave to amend its complaint, but the Trial Judge held that he had denied Respondent's Motion for summary judgment, granted summary judgment for Petitioner; therefore, Respondent's motion for leave to amend its complaint was "Moot". The Court entered its order to this effect on November 14, 1973 (App. 30-31). Respondent's motion for re-hearing was denied, and the Trial Judge entered his order and entry of final summary judgment for Petitioner on November 27, 1973 (App. 31-32). Respondent then took an appeal to the Third District Court of Appeal for the Third District which rendered its decision on June 11, 1974 (App. 1-4). On August 9, 1974, the Third District Court of Appeal denied Petitioner's petition for re-hearing. (App. 6). Petitioner then sought to have reviewed, in the Supreme Court of Florida (Case No. 46,118), the decision of the District Court of Appeal for the Third District, dated June 11, 1974, (App. 5), and on February 18, 1975, denied Petitioner's petition for rehearing. (App. 6). Petitioner then made a suggestion to the 5th Circuit Court of Appeals, New Orleans, Louisiana, for the issuance of a certified question of law to the Su-

preme Court of the State of Florida (App. 7-13), but this was denied on May 12, 1975. This Petition follows.

ARGUMENT

Respondent elected to bring its suit upon the following:



2-1-69

MERCY HOSPITAL 3663 S. Miami Avenue MIAMI, FLORIDA CASE NO. 240211 U

NAME LAST / FIRST / MIDDLE	DATE ADMITTED	TIME	ROOM	RATE
CARR, MARJORIE A.	12-31-68	5:15 PM	291	55.00
ADDRESS / CITY / ZONE / STATE	RELIGION	PARISH	LAST ADMISSION	
3021 S.MIAMI AVENUE MIAMI, FLORIDA	PROTESTANT		1959	
PERMANENT OR MAILING ADDRESS	PHONE	AGE	SEX	S M W D	COLOR
SAME	FRA-1179	62	F	M	W
OCCUPATION / EMPLOYER OF PATIENT / PHONE	DATE OF BIRTH		DATE OF ACCIDENT	
HOUSEWIFE	6-26-05			
NEAREST RELATIVE / ADDRESS OF RELATIVE	RELATIONSHIP		PHONE	
HENRY R. CARR - 635-1468 SAME	HUSBAND		SAME	
ATTENDING PHYSICIAN / ADMITTING DIAGNOSIS			ADM. OFF	
CRS. E. ST. MARYS/T. MOTO PNEUMONIA			MAL	

DEPOSIT REQUESTED PAYMENT ARRANGEMENTS

HOSPITAL ACCOUNT			BUDGET		
Cash	$ Inc.	Other	Budg. Acc.	Budget	Other
	✓				

AUTHORIZATION

Whereas, on the ____ day of ____, 19__, ____ entered THE MERCY HOSPITAL OF MIAMI, FLORIDA, as a patient; and Whereas, there is presently no way of immediately ascertaining the total amount of all rates, expenses and charges for services and treatments rendered by the HOSPITAL to this patient, nor of immediately ascertaining the total amount of cash deposits, payments, credits, and proceeds from Insurance Policies which will be assigned to reduce the amounts due and owing the HOSPITAL for services and treatment to this patient; and Whereas, it is the desire of the undersigned that the HOSPITAL be paid for all services and treatment rendered the patient immediately upon a determination of the actual amount and balance, if any, which remains after application of all credits and payments.

Now, therefore, the undersigned do hereby authorize and direct the Mercy Hospital of Miami, Florida, or ITS its said complete the blanks of the "Agreement to pay unpaid balance" executed by the undersigned and appearing below, ONLY TO THE EXTENT OF AND IN AN AMOUNT EQUAL TO THE FINAL BILLS, (AFTER CREDITING AND DEDUCTING ALL PAYMENTS MADE FOR THE BENEFIT OF THIS PATIENT, INCLUDING CASH DEPOSITS AND INSURANCE POLICY CREDITS AND PROCEEDS) for all services, facilities, food, medications, and expenses of every kind and description for ancillary services and any other thing supplied or furnished the patient by the hospital, together with previously incurred and yet unpaid hospital bills, and a charge for deferred payments, provided that all rates, expenses and charges are in accordance with the customary standard and normal rates as set forth in regular schedules which are available for inspection and review by the undersigned.

Dated this ____ day of ____, 19__. X ____

Witness M. Lindgren X Henry R Carr

AGREEMENT TO PAY UNPAID BALANCE

Amt. No. ____ Date ____, 19__

FOR VALUE RECEIVED, I/we, jointly and severally, promise to pay to the order of Mercy Hospital of Miami, Florida, the sum of ____ DOLLARS ($ ____), which amount includes hospital deferred charges, at the office of the Professional Men's Association of Florida, Inc., Miami, Florida, or such other office as the holder hereof may designate, payable according to the schedule below.

All installments shall become due and payable, at the option of the holder, if any installment is not paid when due. All sums past due shall bear interest, at the rate of 7% per annum. A fee of $5.00 shall be payable for any renewal or rearrangement. It is especially agreed that if this be placed for collection, the undersigned will pay reasonable collection costs and attorney's fees. It is also agreed that the undersigned may prepay the agreement in full and receive a refund credit of interest.

SCHEDULE

Payable to ____ successive monthly installments of $ ____ per month beginning 5th, 10th, 15th, 20th, and 25th (circle one) ____ Payments must be on one of these dates ____, 19__, and a like amount on the same day of each succeeding month until fully paid.

Maker's Signature Henry R Carr

Maker's Signature ____

City and State ____

Co-Maker's Signature ____ (If needed)

City and State ____

PLEASE NOTE: The Hospital is only authorized to assert the amounts stated after deducting all payments and credits for the benefit of the patient, including credits for cash deposits and insurance Policies, and to establish a schedule of installment payments where full and complete payment cannot be made immediately.

exactly as shown, contrary to Section 3-115, p. 45, Vol. 2, MASTER EDITION OF THE UNIFORM COMMERCIAL CODE and Florida Statutes 673.3-115 which clearly state that the foregoing instrument is unenforceable until completed in accordance with the authority given.

Respondent's suit was not filed against Petitioner until three years, seven months, and twenty four days, after its cause of action had accrued. Florida Statutes 95.11 (e) had therefore barred Petitioner's claim before its suit was commenced. Since Respondent elected to sue on the aforesaid incomplete instrument, the Trial Judge ruled correctly that the Statutes of Limitation barred Respondent's claim and the Uniform Commercial Code, as well as Florida Statutes 673.3-115 prevented Respondent from enforcing its incomplete instrument.

For the District Court of Appeal of Florida for the Third District to ignore the application of F.S.A. 95.11 (e), the Uniform Commercial Code, and Florida Statutes 673.3-115, operated to deprive Petitioner of equal protection under the law and due process of law. For the Court to extract, from the aforesaid incomplete instrument, only so much of its contents as would justify its decision, without, at the same time, considering the operation and effect of the entire contents of the incomplete instrument, operated to deprive Petitioner of his lawful contract rights. It mattered not that the Honorable Court reversed and remanded the Trial Judge's ruling for further proceedings as the law prevented it from doing so. This was the only instrument before the Court when it rendered its decision; the Court not having considered Respondent's proposed second amended complaint.

The anomaloy of the Court's decision then is simply this: Is it in conflict with the Uniform Commercial Code? Is it in conflict with Florida Statutes 95.11(e) and 673.3-115? Is it in conflict with the Fifth and Fourteenth amendments to the United States Constitution, as well as with the Constitution of the State of Florida with respect to the deprivation of property without due process of law, and due process of law? Petitioner argues that it is for the reasons stated herein.

CONCLUSION

Petitioner has been deprived of equal protection of the law. He has suffered the loss of his property without due process of law. He has not been afforded due process of law as the decisions of the Courts have operated to discriminate against him.

Because of the reasons and authorities set forth herein, Petitioner believes that the decisions herein sought to be reviewed are erroneous and are in conflict with the Uniform Commercial Code, Florida Statutes 95.11(e) and 673.3-115, which should be approved by this Court as the controlling law for the case sub judice in the State of Florida.

Respectfully submitted,

HENRY R. CARR
Triangle Building
595 N.W. 91st St.
Miami, Florida

CERTIFICATE

I HEREBY CERTIFY a true copy of the foregoing Petition has been furnished to:

1. Sheldon M. Simons, Esq.
   Attorney for Respondent
   507 Professional Building
   3661 South Miami Avenue
   Miami, Florida 33133

2. The Honorable William P. Carter
   Clerk of the District Court
   of Appeal, Third District
   1350 N.W. 12th Avenue
   Miami, Florida 33136

3. The Honorable Sid J. White
   Clerk of the Supreme Court
   State of Florida
   Supreme Court Building
   Tallahassee, Florida 32304

4. The Honorable Edward W. Wadsworth
   Clerk of the United States Court of Appeals
   Fifth Circuit
   Room 102, 600 Camp Street
   New Orleans, Louisiana 70130

this ____ day of July, 1975.

HENRY R. CARR, Esq.
Triangle Building
595 N.W. 91st Street
Miami, Florida 33150